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DIGEST OF WATER POLLUTION CONTROL LEGIS-
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Public Health Service
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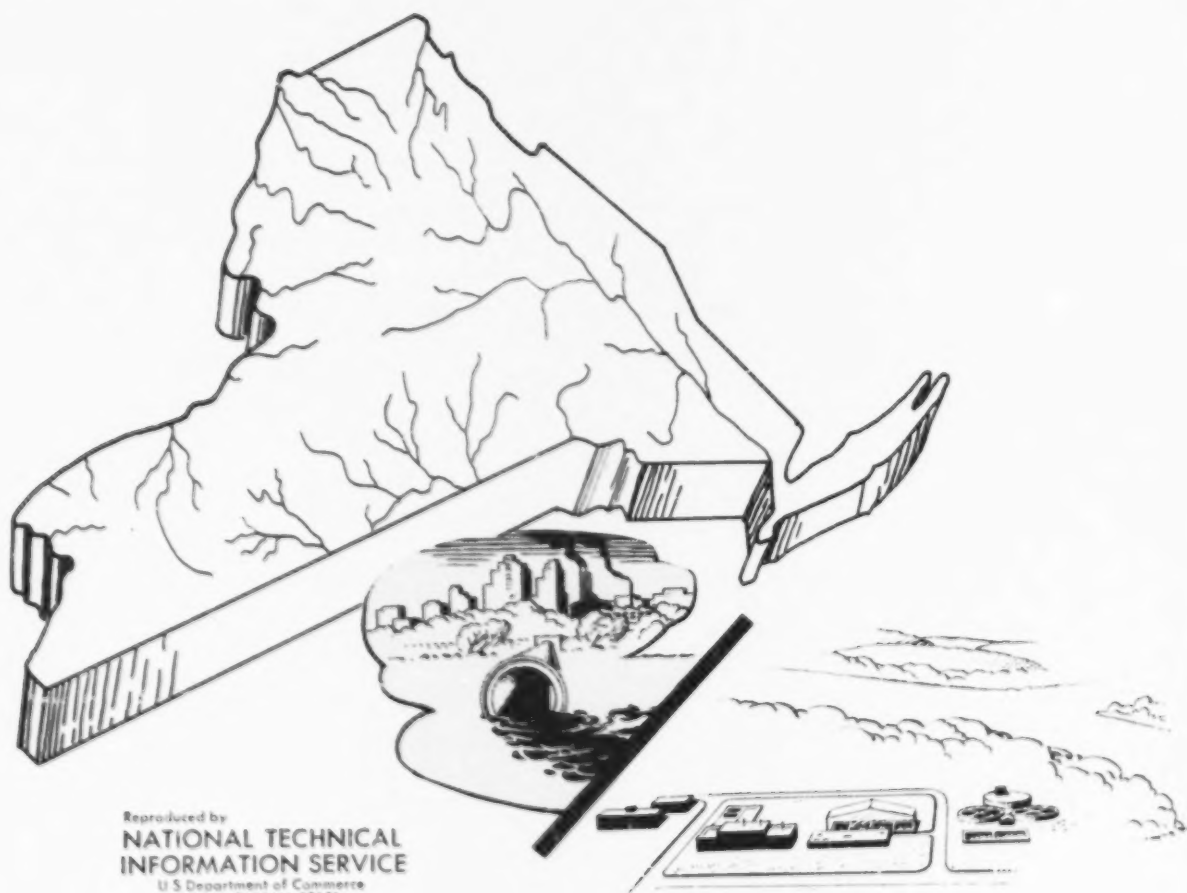
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Digest of WATER POLLUTION CONTROL LEGISLATION ... New York



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U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service

Revised February, 1959

Section 3 of the Federal Water Pollution Control Act (33 U.S.C. 466b) directs the Public Health Service to "encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention and control of water pollution."

This Digest is one of a series prepared by the Public Health Service as a service to the States and others interested in these objectives. Cooperation of State officials in the preparation of these digests is gratefully acknowledged.

Revised February, 1959

1

DIGEST OF NEW YORK WATER POLLUTION CONTROL LEGISLATION

I. GENERAL STATEMENT

The Water Pollution Control Board, created in 1949, within the State Department of Public Health, has authority to develop a comprehensive program for the abatement and control of water pollution in the State (Public Health Law, Sec. 1208)^{1/}. It is given the power to make rules and regulations, classify the waters of the State, set standards of purity of such waters, hold hearings and issue orders, determinations and permits. During the development period of the program, the Departments of Health and Conservation, which prior to 1949 had full authority in this field, retain some of their controls over water pollution; the Department of Health until April 1, 1964 and the Department of Conservation until January 1, 1960 (Public Health Law, 1957 Cum. Supp., Secs. 1168 (as amended by Laws of 1958, Ch. 179), 1263).

The functions of the State Department of Health in water pollution matters relate primarily to public water supplies and sewage disposal affecting such supplies (Public Health Law, Secs. 1100, 1150).

There is a Public Health Council in the Department of Health which, at the request of the Commissioner of Health, considers any matter relating to the preservation and improvement of public health. The Council is authorized to establish, amend and repeal sanitary regulations, to be known as the Sanitary Code, subject to the approval of the Commissioner. Such Sanitary Code, among other things, prescribes the qualifications of public health personnel of the Department, of sanitary and public health engineers, of operators of public sewage treatment plants, and public water

^{1/} Citations in this digest refer to McKinney's Consolidated Laws of New York Annotated, and the 1957 Cumulative Supplement thereto, unless otherwise noted.

treatment and purification plants (Public Health Law, Sec. 225; appendix, Ch. 11, secs. E, F, G).

The functions of the State Department of Conservation in water pollution matters relate primarily to the protection of fish and game (Conservation Law, 1957 Cum. Supp., Secs. 180, 324).

II. ADMINISTRATIVE ORGANIZATION

Water Pollution Control Board

1. Composition and organization

The Board is created within the State Department of Public Health and is composed of the Commissioners of the Departments of Health, Conservation, Agriculture and Markets, Commerce and the Superintendent of the Department of Public Works. Each member may designate a deputy to perform his duties. The Commissioner of Health or his designee is Chairman of the Board. The Board appoints an Executive Secretary, who must be a duly qualified sanitary engineer, trained and experienced in the fields of environmental sanitation, pollution abatement, and public health. Such Executive Secretary is the administrative agent of the Board. The Board meets at least monthly, and at such other times as called by the Chairman. The Chairman must call a special meeting upon receipt of a written request signed by two or more members. Three members of the Board constitute a quorum (Public Health Law, Secs. 1205, 1206, 1207).

2. Powers and duties

a) Development of comprehensive plan

The Board is authorized to prepare and develop a general comprehensive plan for the abatement and prevention of pollution (Public Health Law, Sec. 1208 (4)(e)). In this connection, the Board is empowered to

classify the waters of the State and set standards of quality and purity thereof (Public Health Law, Sec. 1208 (3)(a)). Before classifying the waters and setting standards, the Board must hold public hearings thereon and give notice thereof. Classifications and standards do not become effective until filed with the Secretary of State for publication in the "Official Compilation of Codes, Rules and Regulations of the State of New York" (Public Health Law, Sec. 1209).

b) Issuance of permits and review of plans and specifications

The Board is empowered to issue, modify or deny permits for the prevention and abatement of pollution, for the discharge of wastes, or for the installation or operation of disposal systems (Public Health Law, Sec. 1208 (3)(e)). The Board requires that plans for disposal systems or any parts thereof be submitted to it, for approval, and inspects the construction thereof for compliance with approved plans (Public Health Law, Sec. 1208 (4)(f)).

c) Enforcement

When it appears to the Board, after investigation, that there has been a violation of the Act, written notice is given to the alleged violator, setting forth the violation and requiring that it be corrected, or that the alleged violator appear before the Board at a time and place specified in the notice and answer the charges (Public Health Law, 1957 Cum. Supp., Sec. 1242 (2)).

When it appears to the Board, after investigation, that industrial or other wastes are allowed to run into a sewer or sewage disposal system, the content of which ultimately is discharged into the waters of the State and contributes to the pollution of the said waters, it notifies the

alleged violator thereof to appear at a hearing and answer the charges. At least 20 days notice of the hearing must be given, except in emergency cases. Upon the return day the alleged violator must file a statement setting forth the steps, if any, which are being taken to prevent polluting discharges into State waters and any other defenses or information pertinent to the case. Pertinent and relevant testimony of witnesses must be received in support of or in opposition to this statement. After consideration or on default in appearance, the Board issues a final order, and notifies the interested party in writing. The burden of proof with respect to violations is upon the Board (Public Health Law, Sec. 1242).

In case of emergency, whenever the Board, after investigation, is of the opinion that any person is discharging or causing to be discharged into the waters of the State, directly or indirectly, any wastes, and three or more members of the Board certify that such discharge constitutes danger to the health of the people, and that it appears to be against the interests of the State to delay action for the period of 20 days, the Board notifies the person that he must discontinue immediately the discharge of such wastes and thereupon such person must immediately discontinue such discharge (Public Health Law, Sec. 1242).

The Board must grant a hearing to anyone not previously heard in connection with an order, who, within 20 days after service upon him of a copy of a notice or order of the Board, files a petition with it alleging that the said order is contrary to fact and injurious to him, and that the order damages him by interference with a private right or privilege. At such hearing the petitioner may appear, present witnesses,

submit evidence and be given full opportunity to be heard. Following such hearing, the Board makes its determination, which, unless an appeal is taken therefrom, is final and conclusive (Public Health Law, Sec. 1243).

All orders of the Board are subject to Court review by an aggrieved party (Public Health Law, Sec. 1244).

Anyone violating any provision of the Act or any order promulgated pursuant to the Act, is liable to a penalty not to exceed \$500.00, and an additional penalty not to exceed \$100.00 for each day during which such violation continues and, in addition, may be enjoined from continuing such violation. In actions for injunction under this Act any finding of the Board is prima facie evidence of the facts found therein. The Attorney General brings the penalty and injunction actions (Public Health Law, Secs. 1250, 1251). Anyone wilfully violating any of the provisions of the Act or any final order of the Board is guilty of a misdemeanor which is punishable by a fine of not less than \$100.00 nor more than \$500.00 or by imprisonment for a term of not more than one year, or by both such fine and imprisonment for each violation. Each day upon which such violation occurs constitutes a separate violation. The Board institutes and the Attorney General conducts the prosecutions for wilful violations; however, the District Attorney, at the request of the Attorney General, may perform such functions (Public Health Law, Sec. 1252).

With certain specified exceptions, it is unlawful for anyone to make any new outlet for the discharge of wastes, or the effluents therefrom, or to construct or operate and use a new disposal system for the discharge of wastes, or to make additions or extensions to existing disposal systems, without a permit from the Board (Public Health Law, Sec. 1230).

d) Conduct of studies, investigations and research

The Board is authorized to conduct studies and research with respect to pollution abatement or control problems, disposal systems, and treatment of wastes. It may also conduct such other investigations as it deems advisable and necessary for the discharge of its duties (Public Health Law, Secs. 1208(3)(g), 1208(4)(d)).

e) Cooperation with other public and private agencies

The Board is empowered to cooperate with the appropriate agencies of the United States, other States, or any interstate agencies with respect to pollution control matters, or for the formulation for submission to the Legislature of interstate pollution control compacts. The Board serves as the State agency for the receipt of moneys from the Federal government, or other public or private agencies and to expend same, for pollution control, studies or research (Public Health Law, Sec. 1208(4)(c)(g)).

f) Administrative powers

The Board determines the rules of its own proceedings (Public Health Law, Sec. 1207(c)). It is authorized to adopt and amend rules and regulations governing the procedure with respect to hearings, filing of reports, the issuance of permits and all other matters deemed necessary to carry the Act into effect (Public Health Law, Sec. 1208(2)). It is further empowered to hold hearings, issue orders and permits, administer oaths, examine witnesses, issue notice of hearings and subpoenas. The Board, or its duly appointed agent, have the right to enter, at all reasonable times, any property, public or private, for the purpose of inspecting and investigating conditions relating to pollution, which

inspection or examination does not involve confidential information relating to secret processes or economics of operation. The Board, or any employee when authorized, may examine any records pertaining to the operation of a disposal system or treatment works, which do not involve confidential information relating to secret processes or to economics of operation (Public Health Law, Secs. 1208, 1240).

The Board has authority to issue orders prohibiting the continuance of existing discharges, even if such discharges are made pursuant to a permit issued under section 76 of the former public health law. However, unless such discharge is a public health hazard, such order does not become effective for one year after service (Public Health Law, Sec. 1223). The Board also has authority to extend up to a period of five years or more, the date for compliance with its orders (Public Health Law, Sec. 1224).

3. Preservation of existing rights and remedies

The Act provides additional and cumulative remedies to abate the pollution of the waters of the State and does not abridge or alter rights of action or remedies now or hereafter existing, nor is any provision of the Act to be construed as estopping the State, persons or municipalities, as riparian owners or otherwise, in the exercise of their rights to suppress nuisances or to abate any pollution (Public Health Law, Sec. 1260). The Act is not to be construed as repealing any of the laws relating to the pollution of the waters of the State not expressly repealed, but is to be held and construed as ancillary to the laws now in force, except as they may be in direct conflict (Sec. 1262).

Also, nothing in the Act is to be construed as amending or repealing sections 180 and 324 of the Conservation Law and any parts of said sections inconsistent with the provisions of this Act or with any rule, regulation, order or determination authorized by this Act is to be held to be effective for the purposes of the Conservation Law, the enforcement of which is to continue to be the duty of the Conservation Department until January 1, 1960 (Public Health Law, 1957 Cum. Supp., Sec. 1263).

4. Statement of policy

The Act states it to be the public policy of the State to maintain reasonable standards of purity of the waters of the State consistent with public health and public enjoyment thereof, the propagation and protection of fish and wildlife, including birds, mammals and other terrestrial and aquatic life, and the industrial development of the State. To that end, the State will require the use of all available and reasonable methods to prevent and control the pollution of the waters of the State (Public Health Law, Sec. 1200).

III. MISCELLANEOUS STATUTORY PROVISIONS RELATING TO WATER POLLUTION

It is unlawful for anyone to discharge into any of the waters of the State, or allow to seep or otherwise discharge into such waters, organic or inorganic matter that will cause or contribute to a condition in contravention of the standards adopted by the Board (Public Health Law, Sec. 1220).

The pollution of the waters of the marine district which is injurious to edible fish and shellfish or the culture thereof, or the dumping of garbage, oils, sludge or refuse of any kind from a vessel or

9

building in the waters of the marine district is prohibited (Public Health Law, Sec. 1221).

It is unlawful to pollute the waters by sludge, acid, other refuse, sewage or other substances injurious to shellfish culture or fish. It is also unlawful to throw or dump sludge or other refuse from any vessel or building in the waters of the marine district (Conservation Law, 1957 Cum. Supp., Sec. 324).

It is unlawful for anyone to pollute the waters of the State by dye-stuffs, coal tar or other deleterious or poisonous substances in quantities injurious to fish; or to maintain any privy, barn or barnyard where the drainage from the same finds its way into waters used by any State fish hatchery (Conservation Law, 1957 Cum. Supp., Sec. 180).

The contamination of salt wells by any deleterious substances is punishable by imprisonment for not more than 5 years or by a fine of not more than \$2,000, or both (Penal Law, Sec. 1758).

It is a misdemeanor for anyone to throw or deposit gas tar, the refuse of a gas house or other noxious or poisonous substance into any public waters, or into any sewer or stream running or entering such waters (Penal Law, Sec. 1759).

Anyone who wilfully poisons any spring, well or reservoir of water, is punishable by imprisonment in the State prison not exceeding 10 years, or in the county jail not exceeding 1 year, or by a fine not exceeding \$500, or both (Penal Law, Sec. 1760).

It is a misdemeanor for anyone to deposit any dead animal, carrion, offal, excrement, garbage or other putrid or offensive matter into the navigable waters of the State, except as the same may be authorized by the State Department of Health. Violation carries a fine of not to exceed \$100 or imprisonment of not more than one year, or both (Navigation Law, Sec. 33).

IV. INTERSTATE COMPACTS

New York ratified and joined the Interstate Sanitation Commission (Tri-State Compact) on January 17, 1936 (Laws of New York, 1936, Ch. 4).

New York ratified and joined the Ohio River Valley Water Sanitation Compact on July 11, 1939 (Laws of New York, 1939, Ch. 945).^{2/}

New York ratified the New England Interstate Water Pollution Control Compact on April 23, 1949, and became a party thereto on August 19, 1949 (Consolidated Laws Service (Loose-leaf), Unconsolidated Laws, Ch. 111, secs. 1-7; Laws of New York, 1949, Ch. 764).

NOTE:

New York became a member of the Interstate Commission on the Delaware River Basin, which was organized by interstate agreement, not a formal compact, on May 31, 1939 (Laws of New York, 1939, Ch. 600).

New York is a party to the Advisory Board on Pollution of Boundary Waters for the International Joint Commission.

Also for some 30 years, New York has joined with other States in the Great Lakes and Upper Mississippi River Board of Public Health Engineers. This group is primarily engaged in developing uniform standards to be used in the review of plans of facilities to be installed dealing with public health.

^{2/} New York originally ratified and joined the Ohio River Compact on June 8, 1939. However, this legislation was repealed by a new ratification statute passed on July 11, 1939.